

Assembly Bill No. 505

CHAPTER 1059

An act to amend Sections 11344.1, 11346.2, 11346.3, 11346.4, 11346.5, and 11346.8 of, to amend and repeal Section 11342 of, to add Sections 11340.8, 11341, 11345, 11346.45, 11346.7, 11347, 11347.6, and 11348 to, to add Sections 11342.535 and 11342.595 to, to add Article 7 (commencing with Section 65054) to Chapter 1.5 of Division 1 of Title 7 of, to add Chapter 3.7 (commencing with Section 15379.50) to Part 6.7 of Division 3 of Title 2 of, to repeal Section 11346.54 of, and to repeal Chapter 11 (commencing with Section 8850) of Division 1 of Title 2 of, the Government Code, relating to administrative procedures.

[Approved by Governor September 30, 2000. Filed
with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 505, R. Wright. Administrative procedures.

(1) The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law.

This bill, which would be known as the Small Business Regulatory Reform Act of 2000, would revise various provisions of the act with respect to the duties of the office and state agencies in the adoption, amendment, or repeal of regulations, including, among other things, the following:

(a) Requiring the office to establish a unique identification numbering system for each regulatory action for identification and tracking purposes.

(b) Requiring the office to post specified information on its website.

(c) Authorizing a state agency to extend the time period for public comment in specified circumstances.

(d) Revising the information that a state agency is required to submit with the notice of the proposed action.

(e) Revising the procedures a state agency must use to make a determination of whether a proposed administrative regulation or proposed amendment to an administrative regulation has the potential for significant, statewide adverse economic impact directly affecting California business enterprises.

(f) Revising the notification procedures for notifying interested persons of the proposed adoption, amendment, or repeal of a regulation.

(g) Imposing additional requirements on state agencies issuing regulations in order to make the regulatory process more user friendly and improve communications between the parties in the regulatory process.

(h) Requiring each state agency to designate at least one person to serve as a small business liaison.

(i) Defining “proposed action” and “cost impact” under the rulemaking provisions of the Administrative Procedure Act.

(2) Existing law requires that a California Small Business Advocate be established in the Trade and Commerce Agency and provides for the appointment of the advocate by the Governor.

This bill would recodify and recast these provisions to require that the Office of Small Business Advocate be established in the Office of Planning and Research in the Governor’s office. The bill would revise the duties of the California Small Business Advocate, who is also the director of the Office of Small Business Advocate, to include counseling small businesses regarding the relationship of small business to state government. The bill would also establish a Governor’s Small Business Reform Task Force chaired by the director. It would require the task force to, among other things, hold hearings, conduct a study of specified problems of small business, and report its findings and recommendations to the Governor and the Legislature on or before May 1, 2002.

(3) This bill would incorporate additional changes in Sections 11346.2, 11346.5, and 11346.8 of the Government Code proposed by AB 1822, that would become operative if both bills are enacted and become effective on or before January 1, 2001, and this bill is enacted last. This bill would also make the operation of some of its provisions contingent upon the enactment of AB 1822.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature hereby finds and declares all the following:

(1) The existing rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code) and other provisions of law impact small businesses and small businesses represent 98 percent of all businesses.

(2) Small businesses do not have the time, staff, and resources to monitor the state regulatory system and its impact on their businesses.

(b) The Legislature further finds that for many regulated individuals and businesses, the existing Administrative Procedure Act may be one or more of the following:

(1) Confusing duplicative, vague, and burdensome.

(2) Lacking clarity, specificity, and organization that results in unnecessary work and expense for both state agencies and the businesses and individuals being impacted by proposed regulations.

(3) Failing to maximize existing technology to make access to information easier, quicker, and cheaper for the public.

(4) Insufficiently protecting and representing the interests of small businesses.

SEC. 2. This act shall be known and may be referred to as the Small Business Regulatory Reform Act of 2000.

SEC. 3. Chapter 11 (commencing with Section 8850) of Division 1 of Title 2 of the Government Code is repealed.

SEC. 4. Section 11340.8 is added to the Government Code, to read:

11340.8. In order to make the regulatory process more user friendly and to improve communication between affected businesses and the regulatory agencies, each state agency that proposes regulations pursuant to this chapter shall do all of the following:

(a) Accept comments from interested parties by facsimile and electronic mail.

(b) Post on its Internet website, if the agency has an Internet website, information regarding the proposed regulation or proposed regulatory repeal or amendment that includes, but is not limited to, all of the following:

(1) Notice of the proposed action.

(2) Initial statement of reasons for the regulation or proposed repeal or amendment.

(3) Text of the proposed regulation or proposed amendment to the regulation or instructions on how to obtain the text.

(4) Final statement of reasons.

(5) If applicable, a dated notice of the intent of the agency to discontinue the proposed action.

(6) The office's decisions on the regulation, proposed regulation, or proposed amendment or repeal of a regulation.

(7) The date the regulation was filed with the Secretary of State.

(8) The effective date of the regulation.

(9) A statement to the effect that a business or person submitting a comment to a proposed regulation or proposed amendment or repeal of a regulation has the right to request a copy of the final statement of reasons.

(c) Publication under subdivision (b) supplements any other required form of publication or distribution. The failure to comply with this section is not grounds for disapproval of a proposed regulation. Subdivision (b) does not require an agency to establish or maintain a website or other forum for the electronic publication or distribution of written material.

SEC. 5. Section 11341 is added to the Government Code, to read:

11341. (a) The office shall establish a system to give a unique identification number to each regulatory action.

(b) The office and the state agency taking the regulatory action shall use the identification number given by the office pursuant to subdivision (a) to refer to the regulatory action for which a notice has already been published in the California Regulatory Notice Register.

(c) The identification number shall be sufficient information for a member of the public to identify and track a regulatory action both with the office and the state agency taking the regulatory action. No other information pertaining to the regulatory action shall be required of a member of the public if the identification number of the regulatory action has been provided.

SEC. 6. Section 11342 of the Government Code is amended to read:

11342. In this chapter, unless otherwise specifically indicated, the following definitions apply:

(a) “Agency” and “state agency” do not include an agency in the judicial or legislative departments of the state government.

(b) “Cost impact” means the amount of reasonable range of direct costs, or a description of the type and extent of direct costs, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.

(c) “Office” means the Office of Administrative Law.

(d) “Order of repeal” means any resolution, order or other official act of a state agency that expressly repeals a regulation in whole or in part.

(e) “Performance standard” means a regulation that describes an objective with the criteria stated for achieving the objective.

(f) “Plain English” means language that can be interpreted by a person who has no more than an eighth grade level of proficiency in English.

(g) “Prescriptive standard” means a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means.

(h) “Proposed action” means the regulatory action submitted to the office for publication in the California Regulatory Notice Register.

(i) “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of the state agency. “Regulation” does not mean or include legal rulings of counsel issued by the Franchise Tax Board or State Board of Equalization, or any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation upon any

requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued.

(j) (1) “Small business” means a business activity in agriculture, general construction, special trade construction, retail trade, wholesale trade, services, transportation and warehousing, manufacturing, generation and transmission of electric power, or a health care facility, unless excluded in paragraph (2), that is both of the following:

(A) Independently owned and operated.

(B) Not dominant in its field of operation.

(2) “Small business” does not include the following professional and business activities:

(A) A financial institution including a bank, a trust, a savings and loan association, a thrift institution, a consumer finance company, a commercial finance company, an industrial finance company, a credit union, a mortgage and investment banker, a securities broker-dealer, or an investment adviser.

(B) An insurance company, either stock or mutual.

(C) A mineral, oil, or gas broker; a subdivider or developer.

(D) A landscape architect, an architect, or a building designer.

(E) An entity organized as a nonprofit institution.

(F) An entertainment activity or production, including a motion picture, a stage performance, a television or radio station, or a production company.

(G) A utility, a water company, or a power transmission company generating and transmitting more than 4.5 million kilowatthours annually.

(H) A petroleum producer, a natural gas producer, a refiner, or a pipeline.

(I) A business activity exceeding the following annual gross receipts in the categories of:

(i) Agriculture, one million dollars (\$1,000,000).

(ii) General construction, nine million five hundred thousand dollars (\$9,500,000).

(iii) Special trade construction, five million dollars (\$5,000,000).

(iv) Retail trade, two million dollars (\$2,000,000).

(v) Wholesale trade, nine million five hundred thousand dollars (\$9,500,000).

(vi) Services, two million dollars (\$2,000,000).

(vii) Transportation and warehousing, one million five hundred thousand dollars (\$1,500,000).

(J) A manufacturing enterprise exceeding 250 employees.

(K) A health care facility exceeding 150 beds or one million five hundred thousand dollars (\$1,500,000) in annual gross receipts.

SEC. 6.2. Section 11342 of the Government Code is repealed.

SEC. 6.5. Section 11342.535 is added to the Government Code, to read:

11342.535. “Cost impact” means the amount of reasonable range of direct costs, or a description of the type and extent of direct costs, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.

SEC. 6.7. Section 11342.595 is added to the Government Code, to read:

11342.595. “Proposed action” means the regulatory action submitted to the office for publication in the California Regulatory Notice Register.

SEC. 7. Section 11344.1 of the Government Code is amended to read:

11344.1. The office shall do all of the following:

(a) Provide for the publication of the California Regulatory Notice Register, which shall be an official publication of the State of California and which shall contain the following:

(1) Notices of proposed action prepared by regulatory agencies, subject to the notice requirements of this chapter, and which have been approved by the office.

(2) A summary of all regulations filed with the Secretary of State in the previous week.

(3) Summaries of all regulation decisions issued in the previous week detailing the reasons for disapproval of a regulation, the reasons for not filing an emergency regulation, and the reasons for repealing an emergency regulation. The California Regulatory Notice Register shall also include a quarterly index of regulation decisions.

(4) Material that is required to be published under Sections 11349.5, 11349.7, and 11349.9.

(5) Determinations issued pursuant to Section 11340.5.

(b) Establish the publication dates and manner and form in which the California Regulatory Notice Register shall be prepared and published and ensure that it is published and distributed in a timely manner to the presiding officer and rules committee of each house of the Legislature and to all subscribers.

(c) Post on its website, on a weekly basis:

(1) The California Regulatory Notice Register. Each issue of the California Regulatory Notice Register on the office’s website shall remain posted for a minimum of 18 months.

(2) One or more Internet links to assist the public to gain access to the text of regulations proposed by state agencies.

SEC. 8. Section 11345 is added to the Government Code, to read:

11345. The office is not required to develop a unique identification number system for each regulatory action pursuant to Section 11341 or to make the California Regulatory Notice Register available on its website pursuant to subdivision (c) of Section 11344.1 until January 1, 2002.

SEC. 9. Section 11346.2 of the Government Code is amended to read:



11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. If the regulation affects small business, the agency shall draft the regulation in plain English, as defined in subdivision (e) of Section 11342. However, if it is not feasible to draft the regulation in plain English due to the technical nature of the regulation, the agency shall prepare a noncontrolling plain English summary of the regulation.

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(3) (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of any reasonable alternatives the agency has identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business. It is not the intent of this paragraph to require the agency

to artificially construct alternatives or to justify why it has not identified alternatives.

(4) Facts, evidence, documents, testimony, or other evidence upon which the agency relies to support a finding that the action will not have a significant adverse economic impact on business.

(5) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

SEC. 9.5. Section 11346.2 of the Government Code is amended to read:

11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. The agency shall draft the regulation in plain English.

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikethrough to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(3) (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of any reasonable alternatives the agency has identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business. It is not the intent of this paragraph to require the agency to artificially construct alternatives or to justify why it has not identified alternatives.

(4) Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

(5) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.



(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

SEC. 10. Section 11346.3 of the Government Code is amended to read:

11346.3. (a) State agencies proposing to adopt, amend, or repeal any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision, assessing the potential for adverse economic impact shall require agencies, when proposing to adopt, amend, or repeal a regulation, to the extent that these requirements do not conflict with other state or federal laws:

(1) The proposed adoption, amendment, or repeal of a regulation shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

(2) The state agency, prior to submitting a proposal to adopt, amend, or repeal a regulation to the office, shall consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

It is not the intent of this section to impose additional criteria on agencies, above that which exists in current law, in assessing adverse economic impact on California business enterprises, but only to assure that the assessment is made early in the process of initiation and development of a proposed adoption, amendment, or repeal of a regulation.

(b) (1) All state agencies proposing to adopt, amend, or repeal any administrative regulations shall assess whether and to what extent it will affect the following:

(A) The creation or elimination of jobs within the State of California.

(B) The creation of new businesses or the elimination of existing businesses within the State of California.



(C) The expansion of businesses currently doing business within the State of California.

(2) This subdivision does not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(3) Information required from state agencies for the purpose of completing the assessment may come from existing state publications.

(c) No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

SEC. 11. Section 11346.4 of the Government Code is amended to read:

11346.4. (a) At least 45 days prior to the hearing and close of the public comment period on the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be:

(1) Mailed to every person who has filed a request for notice of regulatory actions with the state agency. Each state agency shall give a person filing a request for notice of regulatory actions the option of being notified of all proposed regulatory actions or being notified of regulatory actions concerning one or more particular programs of the state agency.

(2) In cases in which the state agency is within a state department, mailed or delivered to the director of the department.

(3) Mailed to a representative number of small business enterprises or their representatives that are likely to be affected by the proposed action. "Representative" for the purposes of this paragraph includes, but is not limited to, a trade association, industry association, professional association, or any other business group or association of any kind that represents a business enterprise or employees of a business enterprise.

(4) When appropriate in the judgment of the state agency, mailed to any person or group of persons whom the agency believes to be interested in the proposed action and published in the form and manner as the state agency shall prescribe.

(5) Published in the California Regulatory Notice Register as prepared by the office for each state agency's notice of regulatory action.

(6) Posted on the state agency's website if the agency has a website.

(b) The effective period of a notice issued pursuant to this section shall not exceed one year from the date thereof. If the adoption, amendment, or repeal of a regulation proposed in the notice is not completed and transmitted to the office within the period of one

year, a notice of the proposed action shall again be issued pursuant to this article.

(c) Once the adoption, amendment, or repeal is completed and approved by the office, no further adoption, amendment, or repeal to the noticed regulation shall be made without subsequent notice being given.

(d) The office may refuse to publish a notice submitted to it if the agency has failed to comply with this article.

(e) The office shall make the California Regulatory Notice Register available to the public and state agencies at a nominal cost that is consistent with a policy of encouraging the widest possible notice distribution to interested persons.

(f) Where the form or manner of notice is prescribed by statute in any particular case, in addition to filing and mailing notice as required by this section, the notice shall be published, posted, mailed, filed, or otherwise publicized as prescribed by that statute. The failure to mail notice to any person as provided in this section shall not invalidate any action taken by a state agency pursuant to this article.

SEC. 12. Section 11346.45 is added to the Government Code, to read:

11346.45. (a) In order to increase public participation and improve the quality of regulations, state agencies proposing to adopt regulations shall, prior to publication of the notice required by Section 11346.5, involve parties who would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period.

(b) This section does not apply to a state agency in any instance where that state agency is required to implement federal law and regulations for which there is little or no discretion on the part of the state to vary.

(c) If the agency does not or cannot comply with the provisions of subdivision (a), it shall state the reasons for noncompliance with reasonable specificity in the rulemaking record.

(d) The provisions of this section shall not be subject to judicial review or to the provisions of Section 11349.1.

SEC. 13. Section 11346.5 of the Government Code is amended to read:

11346.5. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other

provisions of law that are being implemented, interpreted, or made specific.

(3) An informative digest containing a concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and the effect of the proposed action. The informative digest shall be drafted in a format similar to the Legislative Counsel’s digest on legislative bills.

(A) If the proposed action differs substantially from an existing comparable federal regulation or statute, the informative digest shall also include a brief description of the significant differences and the full citation of the federal regulations or statutes.

(B) If the proposed action affects small business, the informative digest shall also include a plain English policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, “cost or savings” means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt or amend any administrative regulation, determines that the action may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: “The (name of agency) finds that the (adoption/amendment) of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The



(name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses.”

(8) If a state agency, in adopting or amending any administrative regulation, determines that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this determination, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support that finding.

An agency’s determination and declaration that a proposed regulation may have or will not have a significant, adverse impact on businesses, including the ability of California businesses to compete with businesses in other states, shall not be grounds for the office to refuse to publish the notice of proposed action.

(9) A description of all cost impacts, known to the agency at the time the notice of proposed action is submitted to the office, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

If no cost impacts are known to the agency, it shall state the following:

“The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.”

(10) A statement of the results of the assessment required by subdivision (b) of Section 11346.3.

(11) A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, determines that the action would have an effect. In addition, the agency officer designated in paragraph (13), shall make available to the public, upon request, the agency’s evaluation, if any, of the effect of the proposed regulatory action on housing costs.

(12) A statement that the adopting agency must determine that no reasonable alternative considered by the agency or that has



otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

(13) The name and telephone number of the following:

(A) The agency representative and designated backup contact person to whom inquiries concerning the proposed administrative action may be directed.

(B) An agency person or persons designated to respond to questions on the substance of the proposed regulations, where appropriate.

(14) The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

(15) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

(16) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

(17) A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(b) The agency representative designated in paragraph (13) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The representative shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the alleged inadequacy or inaccuracy of the housing cost estimates, if there has been substantial compliance with those requirements.

SEC. 13.5. Section 11346.5 of the Government Code is amended to read:

11346.5. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other

provisions of law that are being implemented, interpreted, or made specific.

(3) An informative digest drafted in plain English in a format similar to the Legislative Counsel's digest on legislative bills. The informative digest shall include the following:

(A) A concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and of the effect of the proposed action.

(B) If the proposed action differs substantially from an existing comparable federal regulation or statute, a brief description of the significant differences and the full citation of the federal regulations or statutes.

(C) A policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, "cost or savings" means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt, amend, or repeal any administrative regulation, makes an initial determination that the action may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: "The (name of agency) has made an initial determination that the (adoption/amendment/repeal) of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not)



considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses.”

(8) If a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this declaration, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination.

An agency’s initial determination and declaration that a proposed adoption, amendment, or repeal of a regulation may have or will not have a significant, adverse impact on businesses, including the ability of California businesses to compete with businesses in other states, shall not be grounds for the office to refuse to publish the notice of proposed action.

(9) A description of all cost impacts, known to the agency at the time the notice of proposed action is submitted to the office, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

If no cost impacts are known to the agency, it shall state the following:

“The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.”

(10) A statement of the results of the assessment required by subdivision (b) of Section 11346.3.

(11) The finding prescribed by subdivision (c) of Section 11346.3, if required.

(12) A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action would have that effect. In addition, the agency officer designated in paragraph (14), shall make available to the public, upon request, the agency’s evaluation, if any, of the effect of the proposed regulatory action on housing costs.

(13) A statement that the adopting agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

(14) The name and telephone number of the following:

(A) The agency representative and designated backup contact person to whom inquiries concerning the proposed administrative action may be directed.

(B) An agency person or persons designated to respond to questions on the substance of the proposed regulations, where appropriate.

(15) The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

(16) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

(17) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

(18) A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(19) A statement explaining how to obtain a copy of the final statement of reasons once it has been prepared pursuant to subdivision (a) of Section 11346.9.

(20) If the agency maintains an Internet website or other similar forum for the electronic publication or distribution of written material, a statement explaining how materials published or distributed through that forum can be accessed.

(b) The agency representative designated in paragraph (14) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The representative shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the alleged

inadequacy or inaccuracy of the housing cost estimates, if there has been substantial compliance with those requirements.

SEC. 14. Section 11346.54 of the Government Code is repealed.

SEC. 15. Section 11346.7 is added to the Government Code, to read:

11346.7. The office shall maintain a link on its website to the website maintained by the Small Business Advocate that also includes the telephone number of the Small Business Advocate.

SEC. 16. Section 11346.8 of the Government Code is amended to read:

11346.8. (a) If a public hearing is held, statements, arguments, or contentions, either oral or in writing, or both, shall be permitted. If a public hearing is not scheduled, the state agency shall, consistent with Section 11346.4, afford any interested person or his or her duly authorized representative, the opportunity to present statements, arguments or contentions in writing. In addition, a public hearing shall be held if, no later than 15 days prior to the close of the written comment period, an interested person or his or her duly authorized representative submits in writing to the state agency, a request to hold a public hearing. The state agency shall, to the extent practicable, provide notice of the time, date, and place of the hearing by mailing the notice to every person who has filed a request for notice thereby with the state agency. The state agency shall consider all relevant matter presented to it before adopting, amending, or repealing any regulation.

(b) In any hearing under this section, the state agency or its duly authorized representative shall have authority to administer oaths or affirmations. An agency may continue or postpone a hearing from time to time to the time and at the place as it determines. If a hearing is continued or postponed, the state agency shall provide notice to the public as to when it will be resumed or rescheduled.

(c) No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons required by Section 11346.9.

(d) No state agency shall add any material to the record of the rulemaking proceeding after the close of the public hearing or

comment period, unless adequate provision is made for public comment on that matter.

(e) If a comment made at a public hearing raises a new issue concerning a proposed regulation and a member of the public requests additional time to respond to the new issue before the state agency takes final action, it is the intent of the Legislature that rulemaking agencies consider granting the request for additional time if, under the circumstances, granting the request is practical and does not unduly delay action on the regulation.

SEC. 16.5. Section 11346.8 of the Government Code is amended to read:

11346.8. (a) If a public hearing is held, both oral and written statements, arguments, or contentions, shall be permitted. The agency may impose reasonable limitations on oral presentations. If a public hearing is not scheduled, the state agency shall, consistent with Section 11346.4, afford any interested person or his or her duly authorized representative, the opportunity to present statements, arguments or contentions in writing. In addition, a public hearing shall be held if, no later than 15 days prior to the close of the written comment period, an interested person or his or her duly authorized representative submits in writing to the state agency, a request to hold a public hearing. The state agency shall, to the extent practicable, provide notice of the time, date, and place of the hearing by mailing the notice to every person who has filed a request for notice thereby with the state agency. The state agency shall consider all relevant matter presented to it before adopting, amending, or repealing any regulation.

(b) In any hearing under this section, the state agency or its duly authorized representative shall have authority to administer oaths or affirmations. An agency may continue or postpone a hearing from time to time to the time and at the place as it determines. If a hearing is continued or postponed, the state agency shall provide notice to the public as to when it will be resumed or rescheduled.

(c) No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons required by Section 11346.9.



(d) No state agency shall add any material to the record of the rulemaking proceeding after the close of the public hearing or comment period, unless the agency complies with Section 11347.1. This subdivision does not apply to material prepared pursuant to Section 11346.9.

(e) If a comment made at a public hearing raises a new issue concerning a proposed regulation and a member of the public requests additional time to respond to the new issue before the state agency takes final action, it is the intent of the Legislature that rulemaking agencies consider granting the request for additional time if, under the circumstances, granting the request is practical and does not unduly delay action on the regulation.

SEC. 17. Section 11347 is added to the Government Code, to read:

11347. (a) If, after publication of a notice of proposed action pursuant to Section 11346.4, but before the notice of proposed action becomes ineffective pursuant to subdivision (b) of that section, an agency decides not to proceed with the proposed action, it shall deliver notice of its decision to the office for publication in the California Regulatory Notice Register.

(b) Publication of a notice under this section terminates the effect of the notice of proposed action referred to in the notice. Nothing in this section precludes an agency from proposing a new regulatory action that is similar or identical to a regulatory action that was previously the subject of a notice published under this section.

SEC. 18. Section 11347.6 is added to the Government Code, to read:

11347.6. Each state agency that adopts regulations shall, in the final statement of reasons, separately identify comments made by the Office of Small Business Advocate and the Trade and Commerce Agency pursuant to subdivision (e) of Section 15363.6 and respond to each and every comment made by that office or agency directed at the proposed action or at the procedures followed by the agency in proposing or adopting the action, including providing a basis for why those comments were rejected, if applicable.

SEC. 19. Section 11348 is added to the Government Code, to read:

11348. Each agency subject to this chapter shall keep its rulemaking records on all of that agency's pending rulemaking actions, in which the notice has been published in the California Regulatory Notice Register, current and in one central location.

SEC. 20. Chapter 3.7 (commencing with Section 15379.50) is added to Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 3.7. SMALL BUSINESS LIAISON

15379.50. (a) Each state agency that significantly regulates small business or that significantly impacts small business shall designate at

least one person who shall serve as a small business liaison. The agency shall utilize existing personnel and resources to perform the duties of small business liaison.

(b) Each state agency that significantly regulates small business or that significantly impacts small business shall widely publicize the position of small business liaison in appropriate agency publications and on the agency's website if the agency has a website.

(c) The small business liaison shall be responsible for all of the following:

(1) Receiving and responding to complaints received by the agency from small businesses.

(2) Providing technical advice and assisting small businesses in resolving problems and questions.

(3) Reporting small business concerns and, where appropriate, reporting recommendations to the agency secretary or to the agency head, as defined in Section 11405.50.

(d) The small business liaison shall not advocate for or against the adoption, amendment, or repeal of any regulation or intervene in any pending investigation or enforcement action.

SEC. 21. Article 7 (commencing with Section 65054) is added to Chapter 1.5 of Division 1 of Title 7 of the Government Code, to read:

Article 7. California Small Business Advocate

65054. (a) The Legislature finds and declares that it is in the public interest to aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise and maintain a healthy state economy.

(b) In order to advocate the causes of small business and to provide small businesses with the information they need to survive in the marketplace, there is created within the Office of Planning and Research the Office of Small Business Advocate.

(c) Post on its Internet website the name and telephone number of the small business liaison designated pursuant to Chapter 3.7 (commencing with Section 15379.50) of Part 6.7.

65054.1. The following definitions apply to Sections 15334.5 to 15334.8, inclusive, unless otherwise indicated:

(a) "Advocate" means the California Small Business Advocate who is also the Director of the Office of Small Business Advocate.

(b) "Director" means the Director of the Office of Small Business Advocate.

(c) "Office" means the Office of Small Business Advocate.

65054.3. (a) The Director of the Office of Small Business Advocate shall be appointed by, and shall serve at the pleasure of, the Governor.

(b) The Governor shall appoint the employees that are needed to accomplish the purposes of Section 65054, this section, and Section 65054.4.

(c) The duties and functions of the advocate shall include all of the following:

(1) Serve as the principal advocate in the state on behalf of small businesses, including, but not limited to, advisory participation in the consideration of all legislation and administrative regulations which affect small businesses.

(2) Represent the views and interests of small businesses before other state agencies whose policies and activities may affect small business.

(3) Enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by state government which are of benefit to small businesses, and information on how small businesses can participate in, or make use of, those programs and services.

(4) Issue a report every two years evaluating the efforts of state agencies and, where appropriate, specific departments that significantly regulate small businesses to assist minority and other small business enterprises, and making recommendations that may be appropriate to assist the development and strengthening of minority and other small business enterprises.

(5) Consult with experts and authorities in the fields of small business investment, venture capital investment, and commercial banking and other comparable financial institutions involved in the financing of business, and with individuals with regulatory, legal, economic, or financial expertise, including members of the academic community, and individuals who generally represent the public interest.

(6) Determine the desirability of developing a set of rational, objective criteria to be used to define small business, and to develop that criteria, if appropriate.

(7) Seek the assistance and cooperation of all state agencies and departments providing services to, or affecting, small business, including the small business liaison designated pursuant to Section 15379.50, to ensure coordination of state efforts.

(8) Receive and respond to complaints from small businesses concerning the actions of state agencies and the operative effects of state laws and regulations adversely affecting those businesses.

(9) Counsel small businesses on how to resolve questions and problems concerning the relationship of small business to state government.

(10) Maintain, publicize, and distribute an annual list of persons serving as small business ombudsmen throughout state government.

65054.4. (a) Each agency of the state shall furnish to the advocate the reports, documents, and information that are public records and that the director deems necessary to carry out his or her functions under this chapter.

(b) The advocate shall prepare and submit a written annual report to the Governor and to the Legislature that describes the activities and recommendations of the office.

(c) The advocate may establish a centralized interactive telephone referral system to assist small and minority businesses in their operations, including governmental requirements, such as taxation, accounting, and pollution control, and to provide information concerning the agency from which more specialized assistance may be obtained. The advocate may establish and advertise a telephone number to serve this centralized interactive telephone referral system.

65054.5. (a) There is hereby created a Governor's Small Business Reform Task Force. The task force shall be chaired by the Director of the Office of Small Business Advocate and shall include representatives appointed by the Governor from the California Small Business Association, other small business associations, and agency secretaries or their designees from state agencies heavily involved in small business regulation.

(b) The task force shall identify problems and ideas from the small business community concerning the regulation, communication, and assistance of state government with small business. The task force shall create a website to solicit public input, as well as, conduct at least four public hearings around the state to seek advice and recommendations.

(c) The task force shall conduct a study to consider the problems encountered by small businesses working with different levels of government, different offices in state and local government, and multiple jurisdictions, especially in the context of applying for and obtaining required permits and licenses. The study may include participation by the California League of Cities, county boards of supervisors, and small business representatives.

(d) The task force shall prepare and submit a report on or before May 1, 2002, to the Governor and the budget committee of each house of the Legislature with a discussion of its findings and recommendations.

SEC. 22. Sections 6.2, 6.5, and 6.7 of this bill shall become operative only if AB 1822 is enacted and becomes effective on or before January 1, 2001, in which case Section 6 of this bill shall not become operative.

SEC. 23. Section 9.5 of this bill incorporates amendments to Section 11346.2 of the Government Code proposed by both this bill and AB 1822. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each

bill amends Section 11346.2 of the Government Code, and (3) this bill is enacted after AB 1822, in which case Section 9 of this bill shall not become operative.

SEC. 24. Section 13.5 of this bill incorporates amendments to Section 11346.5 of the Government Code proposed by both this bill and AB 1822. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 11346.5 of the Government Code, and (3) this bill is enacted after AB 1822, in which case Section 13 of this bill shall not become operative.

SEC. 25. Section 16.5 of this bill incorporates amendments to Section 11346.8 of the Government Code proposed by both this bill and AB 1822. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 11346.8 of the Government Code, and (3) this bill is enacted after AB 1822, in which case Section 16 of this bill shall not become operative.

